CF0000059339

(21)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Criminal Appeal No. 77 /91

APPELLANT: Massu, Son of Baliram Mehra, aged about 35 years, Cultivator and resident of Village Puspal, Police Station Gramin Thana, Jagdalpur.

Versus

RESPONDENT: The State of Madhya Pradesh

Criminal Appeal Under Section 374(2) of the code of Criminal Procedure

Sentence

XI-HC-22

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक (Cr.) App. No. 727/91 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE MR. L.C.BHADOO,
& HON'BLE MR. VIJAY. K. SHRIVASTAVA, JJ

29.11.2005

Mr. Abhay Tiwari, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer for the State.

Oral judgment.

By this criminal appeal under Section 374 (2) of the Cr.P.C. appellant Massu has questioned the legality of judgment of conviction and sentence dated 9.8.1991 passed by learned 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.41/90 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of Devi Singh convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

In brief, the prosecution case is that there was some dispute regarding the agricultural land between the complainant party and accused party. On 11.11.1989 at about 8.00 a.m. in the morning when Budhram, Devi Singh (deceased), Goverdhan (PW-9), Saamson, Dhansingh (PW-10), Mohan, Chander Bai, Parvati Bai & Devti Bai went to agriculture field for the purpose of cutting the paddy crop, the accused party namely Baliram, Massu (appellant herein), Sonu, Loknath, Mitthu,

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का क्रमांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jagdhar, Somaru and three other persons also came there and started collecting the paddy crop, on which Pardesi asked them not to collect the paddy, on this a quarrel started between both the parties. During that period, the accused/appellant herein shot an arrow towards Devi Singh, which pierced in the left thigh of Devi Singh as a result of which he fell down. Other accused persons also assaulted the complainant party with the axe and stick (Danda) as a result of which Pardesi, Goverdhan, Budhram also received injuries. The complainant party took Devi Singh to their residence, however, he succumbed to the injury on the way. Report (Ex.P-28) was lodged by Pardesi in the Police Station Gramin Thana, Jagdalpur. On receiving the report a case was registered, the Investigating Officer took up the investigation and went to the scene of occurrence where he took into possession the blood stained soil and plain soil under Ex.P-23. He also took into possession the weapon of offence i.e. bow & arrow under Ex.P-32.

After completion of the investigation, charge sheet was filed in the Court of learned Judicial Magistrate 1st Class, Jagdalpur who in turn committed the case to learned Sessions Judge, Bastar at Jagdalpur from where learned 3rd Additional Sessions Judge has received the case on transfer for trial.

Learned Additional Sessions Judge framed the charge against the accused/appellant herein, for commission of offence under Section 302

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

read with Section 34 of the I.P.C. for causing death of Devi Singh. Similar charge was framed against Baliram, Jugdhar, Sonu, Mitthuram, Lakhinath, Somaru, Tularam, Sondo @ Somaru, Khagpati, Devi Singh (deceased).

The prosecution in order to prove the charge against the accused persons examined as many as 11 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused persons under Section 313 of the Cr.P.C. in which accused persons denied the prosecution evidence appearing against them. The accused/appellant herein had stated that he along with his brothers were in possession of the land in dispute and Pardesi and his sons forcibly entered in their agriculture field and started collecting paddy and also assaulted Baliram, Jugdhar & other persons with axe and in order to save the crop and Jugdhar & Baliram, Devi Singh received sickle injury. He has also stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge, after hearing the Additional Public Prosecutor & counsel for the accused persons convicted and sentenced the accused/appellant herein in the manner as mentioned in the earlier part of this judgment. However, other 10 accused persons have been acquitted of the charge.

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Abhay Tiwari, counsel for the accused/appellant and Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer for the State.

Learned counsel for the accused/appellant submitted that from the evidence on record it has established that the accused party was in possession of the land: The complainant party was aggressor, they wanted to take the crop forcibly, therefore, they assaulted the accused party and in that process, as a right of private defence, the accused/ appellant herein assaulted Devi Singh with an arrow but not on the vital part of the body. As such, the offence does not travel beyond Section 304 Part-2 of the I.P.C.

On the other hand, learned Additional Public Prosecutor for the State supported the impugned judgment of the trial Court.

Eyewitnesses PW-7 Pardesi, PW-8 Budhson, PW-9 Goverdhan & PW-10 Dhansingh have stated in their evidence that on the fateful day they were in their field and were engaged in cutting the crop of paddy. The accused party came and started collecting paddy on which they asked them not to collect the paddy, on this the accused party started assaulting them, in that process a fight started between both the parties and in that fight members of both the parties had received injuries. The accused party was the aggressor. It has come in the cross-examination of PW-7 Pardesi that accused party also received injuries.

[पीछे देखिये

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-6 Dr. Pradeep Agarwal has stated in his evidence that on 12.11.1989 he conducted the postmortem on the body of Devi Singh and found that there was a cut injury in the left thigh of Devi Singh in the size of 3cm x 1cm x 1cm and another cut injury was on the left side of thigh in the size of 1.5cm x 0.5 cm. PW-4 Dr. Virendra Kumar has stated that on 12.11.1989 he examined injured Budhson, Goverdhan, Pardesi, Samson & Dhansingh and injuries were present on their body. He has further stated that on 13.11.1989 he examined appellant Massu and found that there was swelling on the elbow of left hand and abrasion on the left shoulder. He also examined Baliram and found that there were three cut injuries and his report is D-2. On the same day, he examined Jugdhar also and found that there were four cut injuries on his body. He examined Metebai & Mathew also and their injury reports are D-4 & D-5. In view of the above evidence of Dr. Virendra Kumar (PW-4) it is established that both the party received injuries.

From the evidence of PW-7 Pardesi, PW-8 Budhson, PW-9 Goverdhan & PW-10 Dhansingh it is established that deceased Devi Singh received injury on his left thigh by an arrow which was shot by the accused/appellant herein, therefore, the involvement of the accused/appellant in assaulting the deceased with the arrow is established.

[पीछे देखिये

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as the question whether the offence of murder was made out against the accused/appellant is concerned, a suit bearing Civil Suit No.9A/88 was filed by the accused party against the complainant party for declaration & injunction before the Civil Court. The Civil Court vide judgment dated 5.9.1988 (Ex.D-9) decreed the suit in favour of the accused party and injunction was issued against the complainant party directing them not to create any disturbance in cutting of paddy and possession of the accused party. Therefore, in view of the judgment passed by the Civil Court, the accused party was in possession of the land in dispute and the complainant party tried to dispossess the accused party, started collecting paddy and in that process a quarrel started between both the parties and accused/appellant herein shot an arrow with the help of bow, which hit on the left thigh of Devi Singh, as a result of which he received injury and on account of excessive bleeding, hemorrhage and shock due to rapture of femoral artery and vein of left thigh Devi Singh died.

As has been observed by the trial court that this is a case of exceeding of right of private defence and moreover there is nothing on record to show that the accused/appellant shot the arrow at Devi Singh with the intention to cause his death, therefore, the finding of the trial court to the extent that the accused/appellant was guilty of committing murder of Devi Singh is not based on the correct appreciation of

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence. However, from the facts and evidence available on record that when the complainant party started collecting paddy from the field, a quarrel started between the complainant party & accused party and in that process without premeditation in a sudden fight in the heat of passion upon sudden quarrel the accused/appellant shot the arrow with the help of bow without aiming at Devi Singh and which landed at the left thigh of the deceased and on account of which unfortunately the artery and vein of left thigh of the deceased was cut and due to excessive bleeding Devi Singh died. But, the accused/appellant had definite knowledge that shooting of an arrow may cause death, therefore, the knowledge can be attributed to the accused/appellant. Therefore, we are of the considered opinion that the offence against the accused/appellant was made out under Section 304 Part-2 of IPC.

In the result, the appeal is partly allowed. The conviction and sentence awarded under Section 302 of the I.P.C. are set aside and appellant Massu is acquitted of the charge under Section 302 of the IPC and sentence awarded under that section, instead thereof appellant Massu is convicted for commission of offence under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 05 years.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

[पीछे देखिये